

CC TO JUDGE DJ
FILED _____ ENTERED _____
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JAN 30 2003 DJ
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

The Honorable John C Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs

MALIK ALMALIKI,

Defendant

No. CR02-421C

DEFENDANT'S MOTION TO SUPPRESS
STATEMENT

EVIDENTIARY HEARING REQUESTED

NOTE FOR MOTION February 7, 2003

MOTION

COMES NOW Defendant, MALIK ALMALIKI, by and through his undersigned attorney, and moves to suppress as evidence at trial the statement of the defendant to federal agents on the ground that said agents obtained the statement from Mr Almaliki in violation of his right to counsel guaranteed by the Fifth Amendment to the United States Constitution This motion is based on the files and records herein and the attached memorandum of law



CR 02-00421 #00000066

Motion to Suppress Statement - 1

LAW OFFICES OF
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MEMORANDUM

I INTRODUCTION

In this case the United States has charged the defendant, Malik Almaliki, *inter alia*, by indictment with Conspiracy to Conspiracy Launder Monetary Instruments in violation of Title 18, United States Code Section 1956(h). The government has alleged that Mr. Almaliki was part of a conspiracy to transfer funds from the United States to various places outside the country with the intent to promote the carrying on of a specified unlawful activity: the transfer of funds to Iraq, in violation of the Emergency Economic Powers Act.

II FACTS

The defense expects the following facts to be established at an evidentiary hearing:

Malik Almaliki is an Iraqi refugee. He has lived in the United States for approximately five years. He resides in Roanoke, Virginia, where he works as an auto detailer. Mr. Almaliki communicates in Arabic both in writing and verbally. He interacts chiefly with people who speak Arabic. He does not possess a command of the English language. He cannot communicate in English regarding anything more than the most rudimentary subjects.

On February 20, 2003, special agents of the Customs Service and ATF, in conjunction with local Roanoke police officers, executed a search warrant at Mr. Almaliki's residence. Mr. Almaliki was present when the agents entered and searched his home. He did not comprehend what the agents were doing or what they said to him. The agents interrogated Mr. Almaliki while they were present in his home. They did not read him the rights guaranteed to him by the Fifth Amendment to the United States Constitution, his Miranda rights, before they interrogated him. Mr. Almaliki made a statement to the agents pursuant to this interrogation.

1 III. ARGUMENT

2 The court should suppress Mr Almaliki's statement to the agents, as it was obtained in
3 violation of his right to counsel guaranteed by the Fifth Amendment to the United States
4 Constitution. The agents did not advise Mr Almaliki of his rights or obtain his knowing,
5 voluntary and intelligent waiver of those rights before they conducted a custodial interrogation

6 **Mr. Almaliki Was In Custody When the Agents Interrogated Him¹**

7 An officer's obligation to give a suspect Miranda warnings before interrogation extends
8 to all instances where the individual is "in custody." Oregon v Mathiason, 429 U S 492, 495, 97
9 S.Ct. 711, 50 L Ed 2d 714 (1977) (per curiam). To determine whether an individual was in
10 custody, a court must, after examining all of the circumstances surrounding the interrogation,
11 decide whether there was a formal arrest or restraint on freedom of movement of the degree
12 associated with a formal arrest. Stansbury v California, 511 U S 318, 322, 114 S.Ct 1526, 128
13 L Ed.2d 293 (1994). The inquiry focuses on the objective circumstances of the interrogation, not
14 the subjective views of the officers or the individual being questioned. Id. at 323, 114 S.Ct 1526
15 The court must determine whether the officers established a setting from which a reasonable
16 person would believe that he or she was not free to leave. United States v Kim, 292 F 3d 969,
17 974 (9th Cir 2002), United States v Beraun-Panez, 812 F 2d 578, 580 (9th Cir), modified by
18 830 F 2d 127 (9th Cir 1987). The following factors are among those likely to be relevant to
19 deciding that question: (1) the language used to summon the individual; (2) the extent to which
20 the defendant is confronted with evidence of guilt, (3) the physical surroundings of the
21 interrogation, (4) the duration of the detention, and (5) the degree of pressure applied to detain
22 the individual. Kim, 292 F 3d at 974, Beraun-Panez, 812 F 2d at 580. This list is not exhaustive,
23 other factors may also be pertinent to, and even dispositive of, the ultimate determination
24

25 ¹ The defense does not anticipate that the government will argue that the agents did not interrogate Mr Almaliki, as the agents reported that they did just that "interviewed" Mr Almaliki

1 whether a reasonable person would have believed he could freely walk away from the
2 interrogators. Kim, 292 F 3d at 974.

3 In Kim, police officers executed a search warrant at the defendant's store and
4 interrogated her inside the store during the search. Id. at 971-72 The officers never read the
5 defendant the Miranda warnings Kim, at 978 They did not handcuff her and did not arrest her
6 until a later date Id. at 972 They also did not, however, tell her that she was free to leave Id.
7 During this interrogation the defendant informed the officers that she did not speak English well
8 Id. The officers stood around her for 30-60 minutes while one of the detectives questioned her
9 without an interpreter and an additional 15-30 minutes after an interpreter arrived Id. Pursuant
10 to the questioning, defendant made incriminating statements Id.

11 The district court granted defendant's motion to suppress statements on the grounds that
12 she indeed was in custody at the time of the interrogation and so should have been advised of her
13 Miranda rights Id. at 973 The Ninth Circuit affirmed the district court, holding that under the
14 totality of the circumstances, a reasonable person in Kim's circumstances would not have felt
15 free to leave Id. at 978

16 The circumstances surrounding Mr Almaliki's interrogation were very similar to Ms
17 Kim's The police entered his home pursuant to a search warrant During the search they
18 interrogated him without reading him his constitutional rights Mr Almaliki barely speaks
19 English Although the agents did not place Mr. Almaliki under formal arrest, a reasonable
20 person in his position would not have felt free to leave Federal agents surrounded him in his
21 home Mr Almaliki does not speak English well enough to understand what was occurring
22 Even if Mr Maliki could have refused to speak to the officers, he had no way of so knowing

23 The agents in this case placed Mr Almaliki into custody when they entered his home and
24 began questioning him. The agents established a setting from which a reasonable person would
25 believe that he or she was not free to leave See Kim, at 974 Their subjective intent of course

1 does not bear on the inquiry Stansbury, 511 U.S. at 323. As the agents never read Mr. Almaliki
2 his constitutional rights before they obtained his statement in such a situation, his statement is
3 not admissible.

4 IV CONCLUSION

5 For the foregoing reasons the court should suppress as evidence at trial the statements
6 made by Mr. Almaliki to the government agents in this case.

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8 Respectfully Submitted,

9 KRISTINE COSTELLO & ASSOCIATES, P S

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13 Kristine Costello
14 Attorney for Malik Almaliki
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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

Vs

MALIK ALMALIKI

Defendant

No. CR02-421C

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of a Motion to Suppress Statement and a copy of the Certificate of Service By Mailing, was served upon the following by depositing the same in the United States Mail at 615 Second Avenue, Seattle Washington, 98104, addressed to

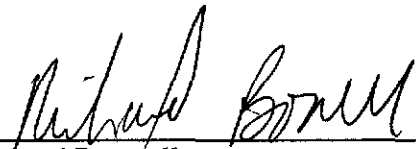
- Francis J. Diskin, Assistant United States Attorney, United States Attorney's Office, 5100 Two Union Square, 601 Union Street, Seattle, WA 98104,
- Carol A. Koller, Attorney for Hussein Alshafei, Federal Public Defender's Office, 1111 Third Avenue, Suite 1100, Seattle, WA 98101-3207;
- James Louis Vonasch, Attorney for Ali Almarhoun, 200 Maynard Building, 119 First Avenue South, Seattle, WA 98104,
- Bruce Erickson, Attorney for Khalid Amen, 411 University Street, Suite 1200, Seattle, WA 98101,

- Catherine Cheney, Attorney for Ali Noor Alsutani, 119 First Avenue South, Suite 500, Seattle, WA 98104
- Song Richardson, Attorney for Salam Said Alkhursan, 810 Third Avenue, 5th Floor, Seattle, WA 98104

DATED this 30th Day of January, 2003

Respectfully Submitted,

KRISTINE COSTELLO & ASSOCIATES, P S


Richard Boswell
Paralegal

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